THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

THE UNITED STATES OF AMERICA, Plaintiff, v. ASCENSION HOLDING COMPANY, LLC; BROWNING-FERRIS INDUSTRIES CHEMICAL SERVICES, INC.; CENAC TOWING CO., LLC; COS-MAR COMPANY; KINDER MORGAN LIQUIDS TERMINALS LLC (f/k/a GATX TERMINALS CORPORATION); NORTHROP GRUMMAN SHIP SYSTEMS, INC.; PORT ALLEN MARINE SERVICE, INC.; TRINITY INDUSTRIES, INC.; VOPAK TERMINAL GALENA PARK INC.(f/k/a PAKTANK CORPORATION-GALENA PARK TERMINAL), Defendants.	:	Civil Action No.

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States of America and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil action brought pursuant to Sections 106, 107, and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606, 9607 and 9613. The United States seeks injunctive relief to

remedy conditions in connection with the release or threatened release of hazardous substances into the environment at or from the Dutchtown Oil Treatment Facility Superfund Site ("Site") located in Dutchtown, Ascension Parish, Louisiana. The United States also seeks to recover the unreimbursed costs it has incurred, and declaratory judgment that Defendants shall be liable for any costs incurred by the United States for future response activities at the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 106, 107, and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this judicial district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1391(b) and 1391(c), because the claims arose, and the releases or threatened releases of hazardous substances occurred, within the Middle District of Louisiana.

DEFENDANTS

4. Defendant Ascension Holding Company, L.L.C. is a limited liability company organized under the laws of the state of Delaware.

5. Defendant Browning-Ferris Industries Chemical Services, Inc. is a corporation organized under the laws of the state of Nevada.

6. Defendant Cenac Towing Co., L.L.C. is a limited liability company organized under the laws of the state of Louisiana.

7. Defendant Cos-Mar Company is a partnership organized under the laws of the state of Louisiana.

8. Defendant Kinder Morgan Liquids Terminals LLC (f/k/a GATX Terminals Corporation) is a limited liability company organized under the laws of the state of Delaware.

9. Defendant Northrop Grumman Ship Systems, Inc. (successor in interest to Avondale Shipyards, Inc.) is a corporation organized under the laws of the state of Delaware.

10. Defendant Port Allen Marine Service, Inc. is a corporation organized under the laws of the state of Louisiana.

11. Defendant Trinity Industries, Inc. (corporate parent of Gretna Machine & Iron Works, Inc.) is a corporation organized under the laws of the state of Delaware.

12. Defendant Vopak Terminal Galena Park, Inc. (f/k/a Paktank Corporation-Galena Park Terminal) is a corporation organized under the laws of the state of Delaware.

13. All Defendants are "persons" as defined within Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

GENERAL ALLEGATIONS

14. The Site consists of approximately five acres of land located at the juncture of Louisiana State Highway 74 and Interstate 10 in Ascension Parish, Louisiana.

15. The Site is currently owned by Defendant Ascension Holding Company, L.L.C.

16. The Site was used to recycle waste oils from 1965 until approximately 1982. It contained a 0.07 acre waste pit, a 0.8 acre waste pit, seven above ground vertical tanks, two small horizontal tanks, and a railroad tank car. It also included a small building and above ground piping with asbestos insulation.

17. EPA conducted a series of investigations at the Site beginning in July 1985.

18. Benzene, toluene, xylene, styrene, ethylbenzene, tetrachloroethane, lead arsenic, antimony and chromiums were detected in the waste pits, tanks, soil, and monitoring wells at the Site. Each of these is a "hazardous substance" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

19. Releases and threatened releases of hazardous substances occurred at the Site within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22) and 9607(a).

20. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. The Site was listed on the National Priorities List on July 22, 1987.

22. EPA issued an Action Memorandum for an Expedited Response Action ("ERA") at the Site on March 25, 1988. The ERA required removal of the contents of the holding pond, waste oil pit, and above ground storage tanks, as well as the processing of oily sludge to be suitable for offsite incineration; the onsite treatment and disposal of water from the pits, decontamination activities, and tank cleaning; and the excavation and treatment of soils beneath the waste pits and holding ponds.

23. A December 18, 1989 CERCLA action, United States of America v. Avondale Industries, et al., Civil Action No. 3:89-CV-00957 (M.D. La.), was filed against twenty parties, including most of the Defendants named in this instant matter. A May 23, 1990 consent decree resolved these CERCLA claims, whereby the settling defendants agreed to perform EPA's

ERA, reimburse oversight costs related to the ERA, and pay $409,464.19 for costs incurred prior to January 31, 1989. The United States' rights regarding removal or remedial action beyond the ERA at the Site were expressly reserved.

24. Settling defendants performed the ERA pursuant to the May 23, 1990 consent decree from January through August 1991. This consisted of removal and off-site disposal of the primary sources of contamination from the holding pond, waste pits, and above-ground storage tanks at the Site.

25. An EPA Administrative Order on Consent, Docket Number CERCLA-VI-12-89, entered on August 7, 1989 with eighteen respondents, including most of the Defendants named in this instant matter, required respondents to perform a Remedial Investigation and Feasibility Study ("RI/FS") for the Site and reimburse EPA's oversight costs related to the RI/FS. Soil and groundwater investigations during the RI identified risk due to residual contamination within the unusable shallow water bearing zone. Remediation alternatives for residual contamination, including natural attenuation, ground water monitoring, and institutional controls to address residual contamination, were evaluated in the FS, which was completed in May 1993.

26. An EPA Record of Decision ("ROD"), issued on June 20, 1994, set forth a remedy for the Site, requiring continued groundwater monitoring to ascertain that residual contaminants were naturally attenuating within the usable shallow water bearing zone.

27. An EPA December 30, 1996 Unilateral Administrative Order ("UAO"), Docket Number CERCLA 6-06-97 (amended on January 15, 1997), was issued to fifteen respondents, including most of the Defendants named in this instant matter. The UAO required respondents to implement the remedial action selected in EPA's ROD, including installation and

sampling of monitoring wells, installation of restriction signs, mowing, and inspection of caps and monitoring wells.

28. With remedial action completed, the Site was deleted from the National Priorities List on November 16, 1999.

29. The Site remains under the operation and maintenance phase of EPA's June 20, 1994 ROD.

30. EPA's actions at the Site constitute "response" actions, as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

FIRST CLAIM FOR RELIEF

31. The allegations in paragraphs 1 - 30 are realleged and incorporated herein by reference.

32. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part:

> In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

33. By Executive Order 12580 of January 23, 1987, the President's functions under Section 106(a) of CERCLA, 42 U.S.C. 9606(a), were delegated to the Administrator of EPA.

34. EPA has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual or threatened releases of hazardous substances from the Site.

35. Defendants are liable for the injunctive relief to which the United States is entitled pertaining to the Site under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

SECOND CLAIM FOR RELIEF

36. The allegations in paragraphs 1 - 35 are realleged and incorporated herein by reference.

37. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

> (1) the owner and operator of a vessel of a facility, [and] . . .
>
> (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, . . . at any facility . . . owned or operated by another party or entity and containing such hazardous substances . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for -
>
> > (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan; . . .
>
> The amounts recoverable in an action under this section shall include interest on the amounts recoverable. . . .

38. The United States has incurred and will continue to incur costs of removal and remedial actions not inconsistent with the National Contingency Plan to respond to the

release or threatened release of hazardous substances at and from the Site, within the meaning of Sections 101(23), (24), and (25) of CERCLA, 42 U.S.C. § 9601(23), (24), and (25).

39. Defendant Ascension Holding Company, L.L.C. is the current owner or operator of the Site, and is therefore jointly and severally liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), for all response costs, including costs of removal and remedial actions incurred by the United States with respect to the Site, not inconsistent with the National Contingency Plan, plus interest on those costs.

40. Defendant Browning-Ferris Industries Chemical Services, Inc., by contract, agreement, or otherwise, arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, at the Site of hazardous substances owned or possessed by Browning-Ferris Industries Chemical Services, Inc., and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all response costs, including costs of removal and remedial actions incurred by the United States with respect to the Site, not inconsistent with the National Contingency Plan, plus interest on those costs.

41. Defendant Cenac Towing Co., L.L.C., by contract, agreement, or otherwise, arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, at the Site of hazardous substances owned or possessed by Cenac Towing Co., L.L.C., and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all response costs, including costs of removal and remedial actions incurred by the United States with respect to the Site, not inconsistent with the National Contingency Plan, plus interest on those costs.

42. Defendant Cos-Mar Company, by contract, agreement, or otherwise,

arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, at the Site of hazardous substances owned or possessed by Cos-Mar Company, and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all response costs, including costs of removal and remedial actions incurred by the United States with respect to the Site, not inconsistent with the National Contingency Plan, plus interest on those costs.

43. Defendant Kinder Morgan Liquids Terminals LLC (f/k/a GATX Terminals Corporation) by contract, agreement, or otherwise, arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, at the Site of hazardous substances owned or possessed by Kinder Morgan Liquids Terminals LLC (f/k/a GATX Terminals Corporation), and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all response costs, including costs of removal and remedial actions incurred by the United States with respect to the Site, not inconsistent with the National Contingency Plan, plus interest on those costs.

44. Defendant Northrop Grumman Ship Systems, Inc., as successor in interest to Avondale Shipyards, Inc., by contract, agreement, or otherwise, arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, at the Site of hazardous substances owned or possessed by Northrop Grumman Ship Systems, Inc., as successor in interest to Avondale Shipyards, Inc., and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all response costs, including costs of removal and remedial actions incurred by the United States with respect to the Site, not inconsistent with the National Contingency Plan, plus interest on those costs.

45. Defendant Port Allen Marine Service, Inc. by contract, agreement, or otherwise, arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, at the Site of hazardous substances owned or possessed by Port Allen Marine Service, Inc., and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all response costs, including costs of removal and remedial actions incurred by the United States with respect to the Site, not inconsistent with the National Contingency Plan, plus interest on those costs.

46. Defendant Trinity Industries, Inc., as corporate parent of Gretna Machine & Iron Works, Inc., by contract, agreement, or otherwise, arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, at the Site of hazardous substances owned or possessed by Trinity Industries, Inc. as corporate parent of Gretna Machine & Iron Works, Inc., and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all response costs, including costs of removal and remedial actions incurred by the United States with respect to the Site, not inconsistent with the National Contingency Plan, plus interest on those costs.

47. Defendant Vopak Terminal Galena Park, Inc. (f/k/a Paktank Corporation-Galena Park Terminal), by contract, agreement or otherwise, arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, at the Site of hazardous substances owned or possessed by Vopak Terminal Galena Park, Inc. (f/k/a Paktank Corporation-Galena Park Terminal), and is therefore jointly and severally liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all response costs, including costs of removal and remedial actions incurred by the United States with respect to the Site, not inconsistent with

the National Contingency Plan, plus interest on those costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Order each Defendant named herein to abate the threat posed by the release or threatened release of hazardous substances at or from the Site, by performing all actions required under the EPA ROD not yet completed;

2. Enter judgment against each and all Defendants named herein, jointly and severally, in favor of the United States, for all costs incurred by the United States with respect to the Site, plus interest;

3. Enter a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that each and all Defendants named herein, jointly and severally, are liable for all future costs to be incurred by the United States in response to the release or threat of release of hazardous substances at or from the Site; and

4. Grant such other relief as the Court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On December 15 , 2008, I served the following documents by first class mail on the parties listed below by placing a true copy of each in a sealed postage pre-paid envelope: "Complaint;" "Notice of Lodging Of Proposed Consent Decree And Request That The Court Not Enter The Consent Decree Until Such Time As The United States So Moves The Court, including Exhibit 1, "Consent Decree."

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